

Washington International Law Journal

Volume 7
Number 3 *Symposium: Emerging Land Use Law
in the Pacific Rim*

7-1-1998

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Jeffrey Patterson, *Testing the Partnership Model of Growth Management*, 7 Pac. Rim L & Pol'y J. 721 (1998).

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TESTING THE PARTNERSHIP MODEL OF GROWTH MANAGEMENT

Jeffrey Patterson[†]

Abstract: Three major events can be expected to influence land use and tenure in British Columbia, Canada, well into the future. A new Forest Practices Code and harvesting regulations and settlement of aboriginal land claims will profoundly affect B.C.'s rural and wilderness landscape. A third initiative, a growth management strategy act adopted by the B.C. legislature in 1995 will, however, potentially have a major impact on the urban landscape that most British Columbians experience in their daily lives. Its objective is the promotion of human settlements that are socially, economically and environmentally healthy. This paper explores the particular geographic and political characteristics that provide the context for managing development in B.C.'s Lower Mainland, which contains Greater Vancouver and fifty-five percent of the province's population. It focuses extensively on the details of the Livable Region Strategy Plan and the companion transportation plan. The primary means by which the regional planning authority influences planning actions and decisions of constituent municipalities is by imposing specific expectations on local Official Community Plans. The Article concludes by questioning whether Official Community Plans or the specific criteria imposed are the best ones for realizing the objectives of growth management. Provincial agricultural zoning and protected spaces policies and reservations will remain the most effective levers for controlling urban development.

I. INTRODUCTION

Three recent major developments in the regulation of land use in British Columbia ("B.C.") will no doubt have a significant impact on emerging land use law in B.C. Perhaps the most profound is the Supreme Court of Canada's decision which held that aboriginal land claims in most of B.C. had not been extinguished in common law and that they were an estate in land, that amounts to considerably more than a licence to use and occupy land.¹ The second major development was the decision by the New

[†] Member, Canadian Institute of Planners, M. Phil., Harvard, 1971. An urban planning consultant, the author is grateful to a number of individuals for providing contributing comments on growth management in the Greater Vancouver region: Hons. Michael Harcourt, Premier from 1991 to 1996, and Darlene Marzari, Minister of Municipal Affairs from 1993 to 1995; Kamal Bhattacharya, Karoly Krajczar and Ralph Perkins, all staff of the Greater Vancouver Regional District; Bruce Gunn and Barry Smith, Agricultural Land Commission staff; Gordon Price, City of Vancouver Councillor; Ann McAfee, Director of CityPlan, City of Vancouver; Terry Crowe, City of Richmond planning staff; Richard Taylor, Executive Director of the Union of B.C. Municipalities; Glen Leicester, Executive Director of Strategic Planning, BC Transit; David Marshall, Executive Director, Fraser Basin Council; and Gary Paget and Elaine Taylor, B.C. Ministry of Municipal Affairs and Housing staff. Of course, all of the conclusions and substance herein are the responsibility of the author with full apologies to those whose input may have been misunderstood or taken out of context.

¹ *Delgamuukw v. British Columbia* [1997] 153 D.L.R. 4th 193; 1997 DLR Lexis 484 (File No. 23779) (Referring the claim to retrial rather than precisely defining aboriginal title, the court encouraged the B.C. and

Democratic Party ("NDP") government in 1992 to limit previously granted forestry harvesting licences on Crown lands (approximately ninety-five percent of B.C.'s forests).² Thereafter, a Commission on Land Use was established to formulate land use plans in several critical areas of B.C.,³ a new Forest Practices Code was implemented,⁴ and the government committed itself to setting aside major additional portions of the province for parklands in 1995.⁵

The third major development, which is in part the subject of this Article, is the establishment of a growth management planning regime to assure that urban development in B.C.'s regions occurs in accordance with best practices principles established by provincial government legislation. While growth management has brought new life into planning in other jurisdictions, especially in the United States where the prerogatives of local officials continue to be subject to more onerous takings precedents, its primary contributions in B.C. have been to discipline the behaviour of local municipalities, and promote settlement dispute mechanisms and local cooperation among those municipalities and the regional districts that supply regional services.

Growth management, as used herein, has as its objective the promotion of human settlements that are socially, economically, and environmentally healthy. Growth management attempts to make efficient use of public facilities and services, land, and other natural resources. It is generally perceived as avoiding urban sprawl and ensuring that development takes place where adequate community infrastructure and facilities exist or can be provided in a timely, economic, and efficient manner.⁶ Growth management is also viewed as encouraging settlement patterns that minimize the use of

Canadian governments and the Gitskan and Wet'suwet'en peoples bringing the claim to negotiate an out-of-court settlement. In the absence of all but a few treaties in the province and given the number of aboriginal peoples and First Nations, there is little doubt that the decision has far greater import in B.C. than in other provinces. It certainly throws doubt on the decision of B.C.'s second governor in the 1870s to ignore both potential claims and treaty processes already concluded or under way in the other western Canadian territories and provinces).

² British Columbia, Ministry of Forests Home Page (visited Oct. 22, 1998) <<http://www.for.gov.bc.ca>>.

³ BRITISH COLUMBIA COMMISSION ON RESOURCES AND ENVIRONMENT, REPORT ON A LAND USE STRATEGY FOR BRITISH COLUMBIA, 1992.

⁴ Forest Practices Code of British Columbia, R.S.B.C. ch. 159 (1996). The new regime represents at least a partial victory for conservationists and environmentalists and some assurance that a major part of B.C.'s old-growth temperate rain forest will be preserved indefinitely. However, the issue is far from settled, and it will likely dominate public debate in the province for years to come.

⁵ British Columbia Ministry of Lands, Parks and Environment, British Columbia's Protected Areas 1998: An Overview (1992), available at Ministry of Forests Home Page (visited Oct. 22, 1998) <<http://www.luco.gov.bc.ca/pas/pasup4.htm>>.

⁶ R.S.B.C. ch. 323, § 849(1) (1996).

automobiles and encourage walking, bicycling, and the use of public transit.⁷ Other objectives of growth management include: 1) efficient movement of people and goods; 2) protection of environmentally sensitive areas; 3) maintenance of the integrity of a secure and productive resource base; 4) mitigation and prevention of air, land, and water pollution; 5) adequate, affordable and appropriate housing; and 6) promotion of the efficient use and conservation of energy.⁸

Some observers in urban planning see growth management as a major event in the evolution of modern planning.⁹ Growth management is distinguishable from growth control in that it overcomes many of the shortcomings associated with attempting to limit urban growth.¹⁰ For others, growth management represents a return to the issues and concerns of a previous planning era from the earlier part of the 20th century.¹¹ Finally, it is this author's observation that growth management also represents a refreshing departure from trends that saw the evolution of municipal planning departments, including most in British Columbia, from "planning" into "development services" departments.

In any case, growth management appears to have managed to gain the allegiance of significant local interests. The real estate development industry supports a growth management regime because it provides development rules understood by all parties.¹² Downtown business interests support it for providing a context for accommodating growth.¹³ Environmentalists support it because growth management typically provides an opportunity for mitigating the effects of pollution and for protecting ecologically sensitive areas.¹⁴ Agriculturists have often supported it because it may be used to protect agricultural productivity, as well as to protect agriculture from the burden of taxation based on current use value.¹⁵ Significantly, the recent evolution of urban planning towards growth management often involves

⁷ *Id.* at § 849(2)(b).

⁸ *Id.* at §§ 849(2)(c, d, e, g, h, m) respectively. The above are among the broad objectives specified in 1995 amendments to British Columbia's Municipal Act.

⁹ Jeanne Wolfe, *Our Common Past: An Interpretation of Canadian Planning History*, PLAN CANADA, July 1994, at 12, 13.

¹⁰ Christopher Leo, *Is Urban Sprawl Back on the Political Agenda? Local Growth Control, Regional Growth Management and Politics*, paper presented at the annual conference of the American Sociological Association, Toronto, Aug. 1997 (on file with author).

¹¹ *Id.*

¹² *Id.* at 3-5.

¹³ *Id.* at 13-14.

¹⁴ *Id.* at 10-12.

¹⁵ *Id.* at 15-17.

extensive intra-regional municipal co-operation, as well as the intrusion of senior government jurisdictions in limiting the latitude often previously provided local governments in planning land uses within their jurisdictions.

This Article has two additional purposes in the context of the evolution of urban planning in British Columbia. B.C. officially abandoned regional planning with Bill 9 in 1983, which abolishes planning as a function of regional districts.¹⁶ "Growth management" represents a limited re-authorisation of regional planning. This Article seeks to contribute to a tentative evaluation of the new direction in the light of practices in other jurisdictions. Second and related, this limited authorization places particular emphasis on mechanisms designed to reconcile the requirements of regional growth management strategies and the autonomy of local Official Community Plans ("OCP's"). B.C.'s growth management legislation represents a departure from the hierarchical regime imposed in other jurisdictions beginning with the State of Oregon's Senate Bill 100 in 1973.¹⁷ For example, regional district boards may not impose their views on constituent municipalities. Disagreements are settled by one of three dispute settlement mechanisms.¹⁸ All parties are subject to the results of this arbitration process.¹⁹ While there is considerably less experience with the process than in many other jurisdictions, this paper will provide some tentative judgements on the efficacy and results of this innovative approach to growth management in multi-jurisdictional urban regions.

This Article begins with a background description of Vancouver's geography, demography, and political context. It is worth stressing several geographic, demographic, and economic features of the Fraser valley because these features also influence the nature of challenges faced by contemporary planners and provide much of the larger context for planning debates in the region. Significant differences between the planning and political regimes of the United States and Canada, as well as the specific social and political features that characterise British Columbia, are also summarised in this background section. The next section of this Article divides and analyses Vancouver's growth management strategy in three components: agricultural zoning by the

¹⁶ The British Columbia Municipal Amendment Act of 1983 was repealed by the Municipal Growth Act of 1995, R.S.B.C. ch. 323 (1996).

¹⁷ OR. REV. STAT. § 197 (1985).

¹⁸ R.S.B.C. ch. 323, §§ 860, 861 (1996).

¹⁹ *Id.*

provincial government; formal growth management planning by local municipalities and regional districts; and manipulation of miscellaneous provincial levers in support of regional growth management. Finally, outcomes are evaluated and challenges to be overcome in the future are outlined.

II. BACKGROUND

A. *The Geographical and Economic Context of the Greater Vancouver Region*

The Greater Vancouver Region lies at the mouth of the Fraser River where it meets the Strait of Georgia before flowing to the north and south of Vancouver Island to the Pacific Ocean. Sometimes known as the "Lower Mainland," the area on which this Article primarily focuses is bounded on the south by the U.S. border along the 49th parallel, on the west by the Strait of Georgia, on the north by the Coast Range of mountains and on the east by the Cascade Mountains and the one hundred and fifty kilometre long Fraser Canyon that isolates the Lower Mainland from interior communities. The Lower Mainland contains nearly seventeen thousand square kilometres, although only slightly more than three thousand square kilometres, or eighteen percent, lies on the valley floor in organised municipalities.²⁰ The remaining eighty-two percent consists of unorganised areas, mostly mountainous and sparsely populated.²¹

The Lower Mainland is divided into two regional districts. The more populous of the two is the Greater Vancouver Regional District ("GVRD"). Consisting of 2,910 square kilometres, 1,990 square kilometres of which is organised into twenty municipalities, the GVRD, which also currently coincides with the Vancouver Census Metropolitan Area ("CMA"), had a population of 1.83 million in 1996.²² The Fraser Valley Regional District ("FVRD") occupies most of the remainder of the

²⁰ BRITISH COLUMBIA MINISTRY OF MUNICIPAL AFFAIRS, MUNICIPAL STATISTICS, Table 2 (1995).

²¹ Unorganised areas are administered by regional districts on behalf of the British Columbia Government. R.S.B.C. ch. 323, §§ 24, 26 (1996).

²² STATISTICS CANADA, CENSUS OF CANADA (1996).

Lower Mainland and contained six municipalities with a total area of 1,070 square kilometres and a population of 215,000 in 1996.²³

While most major cities are located on a body of water, the extent of the domination of the region by the Fraser River cannot be overstated. The Fraser has the second largest flow of Canadian rivers. It is Canada's fifth longest river (1,375 kilometers), and its drainage basin is the fifth largest geographically.²⁴ The Fraser's ecological resources provide a major conservation challenge. It is the spawning ground for over fifty million salmon annually, nearly one-sixth of known world numbers and about half of those of Pacific Canada.²⁵ The Fraser is also internationally recognised for the number and diversity of waterfowl and is a part of the flyway corridor stretching from eastern Siberia to South America and winter home to greater numbers of water fowl than any other Canadian watershed.²⁶ The vast majority of the basin is forested, containing twenty-five percent of B.C.'s forests, but almost half of B.C.'s operable forest area.²⁷

About half of B.C.'s twenty thousand farms, producing eighty-five percent of the value of B.C.'s agriculture, lie in the Fraser basin.²⁸ Accounting for fifty-five percent of farm capital and almost seventy-five percent of gross sales in the Fraser basin, the Lower Mainland is a major component of the basin's agriculture.²⁹

The Lower Mainland is the focus of an even larger land and resource base consisting of the Province of British Columbia and Yukon Territory. British Columbia's area of over 930,000 square kilometres is over sixty percent larger than the Republic of France, thirty-five percent

²³ Two other regional districts generally excluded from the following discussion are sometimes included as part of the Lower Mainland. The Sunshine Coast lies north and west of the GVRD. While it contains over 3,800 square kilometres, its some twelve thousand residents live in a narrow coastal shelf containing two municipalities and an Indian municipality in an area of 64 square kilometres. The Squamish-Lillooet Regional District to the north of the GVRD and FVRD occupies a mountainous area of nearly seventeen thousand square kilometres, only 264 square kilometres of which is organised into four municipalities with a population of twenty-four thousand. The resort Municipality of Whistler is the best known of the four. Municipalities included in regional districts changed considerably from 1967 to 1997. Four municipalities—Langley City, District, Maple Ridge, and Pitt Meadows—were added. Three villages were created from previously unorganised lands. The current FVRD is a 1996 amalgamation of two regional districts and part of a third.

²⁴ WATER IN SUSTAINABLE DEVELOPMENT: EXPLORING OUR COMMON FUTURE IN THE FRASER RIVER BASIN 5 (Anthony H.J. Dorsey & Julian R. Griggs eds., 1991).

²⁵ *Id.* at 7.

²⁶ *Id.* at 8.

²⁷ Fifty-seven percent of the Basin is considered to be forested. *Id.* at 83-85.

²⁸ Fraser Basin Management Program, *Agriculture and Sustainability in the Fraser Basin*, in VANCOUVER: THE PROGRAM, 6 (1997).

²⁹ STATISTICS CANADA, CENSUS OF AGRICULTURE, Table 33.1 (1996).

larger than the State of Texas, and ten percent larger than the western states of California, Oregon, and Washington combined.³⁰ Yet its population (3.6 million in 1996) is less than ten percent that of the same western states and less than that of the neighbouring State of Washington.³¹ Furthermore, about ten percent of Canada's contemporary economic activity occurs in the Fraser basin.³²

Dominated by the export of foodstuffs from the Canadian Prairie and B.C.'s minerals and forest products, Vancouver has emerged as Canada's largest seaport and the second largest in North America.³³ By 1930, the grain elevators of Burrard Inlet held four times the combined capacity of all of the United States' west coast ports.³⁴ The Port of Vancouver employed eleven thousand workers and accounted for one percent of B.C.'s Gross Domestic Provincial Product ("GDPP") in 1996.³⁵ Its container capacity was doubled with the 1996 opening of a new container port near Tsawassen, thirty kilometres south-west of Vancouver.³⁶

While Vancouver's position as a transport node and commercial centre of a large hinterland would have given it prominence in any event, the City's growth and prosperity has remained dependent on the exploitation of B.C.'s natural resources. Approximately twenty-five percent of B.C.'s GDPP is physically exported.³⁷ Manufactured goods comprise less than five percent by value of all B.C. products exported.³⁸ Forest products comprise about fifty-five percent of exports by value, while minerals comprise another thirteen percent.³⁹ Energy, led by coal exports, comprises another eleven percent. Food products, including fish, comprise fewer than three percent of exports, again by value.⁴⁰

³⁰ THE WORLD ALMANAC 1992, 386, 746 (Mark S. Hoffman ed., 1991).

³¹ *Id.*

³² MACLEAN'S MAGAZINE, Sept. 8, 1997, at 42E.

³³ Graeme Wynn, *The Rise of Vancouver*, in VANCOUVER AND ITS REGION, 69-147 (Graeme Wynn & T.R. Oke eds., 1992).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Trevor J. Barnes et al., *Vancouver, the Province, and the Pacific Rim*, in VANCOUVER AND ITS REGION, *supra* note 33, at 171-99. Export data exclude non-merchandise trade such as business services, which comprise an increasing proportion of the employment base of large urban centres, including Vancouver. Cf. WILLIAM J. COFFEY, *EVOLUTION OF CANADA'S METROPOLITAN ECONOMIES* (Institute of Research on Public Policy eds., 1992).

³⁸ Barnes et al., *supra* note 37.

³⁹ *Id.*

⁴⁰ *Id.*

	Population	% Growth	
	1996 (thousand)	1966-86	1986-96
Vancouver	1,832	54.7	32.6
Calgary	822	103.1	22.4
Edmonton	862	92.9	11.4
Winnipeg	667	22.9	6.7
Toronto	4,264	59.0	24.2
Ottawa	1,010	65.7	23.3
Montreal	3,326	19.9	13.9

Source: Canada, Statistics Canada, *Census of Canada, 1966, 1986 and 1996*.

Vancouver's position in trade and resource exploitation is revealed in its demographic growth and in the industrial pursuits of its workforce. From its beginnings in the mid-1880s, Vancouver overtook Winnipeg in the next half century to become Canada's third largest city by 1941.⁴¹ While growth lagged behind such central Canadian centres as Ottawa and Toronto in the two decades from 1966 to 1986 and was significantly less than the two Alberta centres of Calgary and Edmonton in the same period, growth in the most recent decade from 1986 to 1996 exceeded that of other Canadian centres by a considerable margin.⁴²

Vancouver's growth in the 1990s has exceeded that of virtually every other centre in the Pacific region of North America. The CMA's population increased by 17.4 percent from 1990 to 1997.⁴³ Other metropolitan growth rates in the same period were 11.4 percent for San Diego, 3.6 percent for Los Angeles, 3.9 percent for San Francisco, 7.6 percent for San Jose, 9.3 percent for Oakland, 15.1 percent for Portland, 12.9 percent for Tacoma, 11.0 percent for Seattle, 19.4 percent for Bellingham, 12.4 percent for Victoria and 13.3 percent for Calgary.⁴⁴ Vancouver's population is projected to increase by a further 40 percent to over three million by the year 2021.⁴⁵

Buttressing recent growth has been immigration, both from abroad, and from elsewhere in Canada. In the decade from 1981 to 1991, nearly one-third

⁴¹ STATISTICS CANADA, CENSUS OF CANADA (1941).

⁴² STATISTICS CANADA, CENSUS OF CANADA (1986); STATISTICS CANADA, CENSUS OF CANADA (1996).

⁴³ DAVID SAVAGEAU & GEOFFREY LOFTUS, PLACES RATED ALMANAC 14 (1997).

⁴⁴ *Id.* at 7-15.

⁴⁵ GREATER VANCOUVER REGIONAL DISTRICT, MANAGING GREATER VANCOUVER'S GROWTH, Part 2 (1993).

of youth aged fifteen to twenty-four on the move in Canada ended up in Vancouver to be counted in the 1991 Census.⁴⁶ From 1981 to 1995, immigration to Canada from abroad, including refugees, amounted to nearly one percent of Canada's population annually, and over a third were destined for Vancouver during this period.⁴⁷ The vast majority of Vancouver's immigrants from abroad have been from southern and eastern Asia, thus increasing the familial and business ties of Vancouver to the Pacific Rim.⁴⁸

While the Fraser River and the natural resources of its valley and watershed, as well as of the province, have provided the overall context for settlement and resource use in British Columbia, it is the specific geography of the Lower Mainland—particularly the Fraser Estuary, the Burrard Inlet on which the Port of Vancouver is located, and the Coast Range of mountains that stretch northward from north of the Burrard Inlet—that have formed the more immediate context for the development of Greater Vancouver.

For instance, the two thousand metre backdrop provided by the latter and the surrounding water have provided the City of Vancouver with much of its scenic beauty. This geography has also provided the Lower Mainland with two attributes that impinge on management of urban growth. Firstly, the region is a decentralized and multi-nodal. Several settlements pre-date Vancouver in the Lower Mainland. New Westminster, which was established as the capital of British Columbia from 1858 to 1866 and then designated capital of the united colony of British Columbia and Vancouver Island until the designation of Victoria as capital in 1868, was the principal city of the Lower mainland until following the establishment of the Canadian Pacific rail head on Burrard Inlet in 1886.⁴⁹

In addition to New Westminster and Vancouver, a number of other centres have grown from smaller settlements. Ladner (now part of the District of Delta) and Langley were once villages established as part of the Fraser valley's agricultural development.⁵⁰ Steveston (now a part of Richmond) on the Fraser River was the region's major fishing port.⁵¹ Ports Coquitlam and Moody and Millardville (part of the District of Coquitlam) also have older origins as sites for exploiting the woods and stops on the

⁴⁶ Catherine Callaghan, *Canada's Healthiest Cities: A 25 City Check-Up*, CHATELAINE, May 1995, at 55-61.

⁴⁷ STATISTICS CANADA, CENSUS OF CANADA (1986); STATISTICS CANADA, CENSUS OF CANADA (1991); STATISTICS CANADA, CENSUS OF CANADA (1996).

⁴⁸ STATISTICS CANADA, CENSUS OF CANADA: IMMIGRATION AND CITIZENSHIP Catalogue 93-319, Table 6.

⁴⁹ Graeme Wynn, *The Rise of Vancouver*, in VANCOUVER & ITS REGION, *supra* note 37, at 119.

⁵⁰ *Id.*

⁵¹ *Id.*

Canadian Pacific Railway.⁵² Other communities further up the Fraser Valley, such as Abbotsford, Chilliwack, Maple Ridge, Matsqui and Mission also predate their contemporary suburban status.⁵³ The linear nature of the Fraser valley floor has given such centres a presence that they might not have had in other areas. While a major part of the Lower Mainland has developed by means of suburban accretions to the central city, much of the development of the region can also be characterised as the growing together of these separate cities.

The second attribute is simply the difficulty of urbanising the site. Geography often also dictates more far-flung development than might be required on other sites. There are only eighteen thousand square kilometres of land within fifty kilometres of the downtown centre (compared with forty thousand for Toronto and eighty thousand for Montreal), and much of that is not suitable for urban development.⁵⁴ Transportation is dominated by bridges. As many as fifteen bridges and one tunnel traverse the Lower Mainland's waterways. Their approaches are also quite naturally the location of major congestion.

B. The Political Culture of Vancouver and Canada

Growth management, of course, takes place in the context of political and social systems. Despite an increasingly common North American culture, Canada and the United States differ substantially politically and socially, and the differences impinge critically on planning practice and urban development.

The federal systems of Canada and the United States have diverged considerably in their evolution. There has been an increasing tendency to establish "air tight" functional compartments by Canadian federal and provincial governments. While provincial jurisdictions were previously breached by the spending powers of the federal government, particularly following World War II, conditional cost-sharing programs began to be replaced by unconditional, per capita grants in 1977.⁵⁵ The federal

⁵² *Id.*

⁵³ *Id.*

⁵⁴ T.R. Oke et. al., *Primordial to Prim Order: A Century of Environmental Change*, in VANCOUVER AND ITS REGION, *supra* note 33, at 171-99.

⁵⁵ Canada's Established Programs Financing Act (1997).

government's last major conditional cost-sharing program, the Canada Assistance Plan, was rolled into the unconditional grant system in 1996.⁵⁶

Total Canadian federal government expenditures, including transfers to other government levels, were less than forty-eight percent of the government sector in 1995.⁵⁷ The U.S. federal government is responsible for nearly sixty-five percent of total spending by the government sector.⁵⁸ That provinces possess sole jurisdiction over natural resources within their boundaries further aggrandises provincial powers.

One practical result of this division of powers is that Canada has neither possessed a national road network, such as that in the United States, nor had a system of federal subsidies for municipal expressways. Fewer municipal expressways and less suburban sprawl relative to American cities may be a positive consequence.

As most students of political science are aware, Canada's federal and provincial governments possess unitary cabinet governments made up of the dominant party (almost always) or parties (sometimes) in federal Parliament and provincial legislatures. This system contrasts with decentralised power centres and the complex checks and balances in the U.S. federal and state governments. While cabinet government allows the legislative majority to govern with few daily checks, the system itself may be prone to instability. The differences between Canadian political parties appear to be greater than for their U.S. cousins. As will be noted below, B.C.'s political parties have historically maintained radically different views of planning and development. It may be observed that the fortunes of planning in B.C. have historically tended to reflect the views and fortunes of the party in power.

Provincial politics in B.C. have been dominated by a deep left-right schism for over half a century. The NDP, a loose amalgamation of the trade union movement and progressives, has governed since 1991, having briefly governed previously from 1972 to 1975. A right of centre coalition has governed for most of the modern period (1943 through 1972 and 1975 through 1991). As will be noted below, the current brand of growth management in B.C. owes itself to the views and composition of the current provincial government, as well as to B.C.'s political culture.

Canadian municipal affairs are entirely a provincial responsibility. The federal government was forced to dismantle its eight year old Ministry of

⁵⁶ Canada, *Budget Papers*, Feb. 27, 1995.

⁵⁷ STATISTICS CANADA, *supra* note 22, at File D459000, D459302 and D459152.

⁵⁸ *Id.* at File B51200 and B51217.

State for Urban Affairs in 1979, a decade after it had also abandoned an urban renewal program modelled after that in the United States.⁵⁹ Three features dominate B.C.'s municipal system. First, municipalities perform fewer functions than most of their counterparts in other provinces. In 1994 and 1995, B.C. provincial program spending, including local government transfers, were 2.26 times local government program spending, including school boards.⁶⁰ The only other province (excluding the three much smaller Atlantic provinces without local school boards) with a higher ratio of provincial to local spending was Quebec (2.30 times).⁶¹ Almost all social programs in B.C. are administered directly by the provincial government. Ontario's ratio, or centralization index, was 1.24 times.⁶²

Within their jurisdictional spheres, however, municipalities may enjoy greater latitude than their counterparts in other provinces. The B.C. Municipal Act contains very detailed procedures governing the formation, combination and abolition of municipalities, as well as annexations. All changes require local plebiscites prior to confirmation by the Minister of Municipal Affairs.⁶³ All provincial political parties currently appear to remain committed to the local governance tradition maintained since the 1960s. Moreover, the provincial government is better known for creating rather than eliminating municipalities, although several notable amalgamations have been approved in local referenda.⁶⁴

The same popular underpinnings of local politics that have influenced provincial discretion in municipal organization have also inhibited the overlaying of a separate regional government structure atop the existing local government structure, such as has occurred in Ontario and Quebec. The provincial government initially compensated for such shortcomings by establishing special boards and commissions to supply such regional services as water and sewer. In more recent times, regional districts have been established. These differ from regional governments in central Canada in that their directors are delegated by

⁵⁹ Jeffrey Patterson, *Housing and Community Development Policies*, in HOUSE, HOME & COMMUNITY 320-38 (John Miron ed., 1993).

⁶⁰ STATISTICS CANADA, *supra* note 22, at File D462625 and D13036.

⁶¹ *Id.* at Files D13121 and D465420.

⁶² JEFFREY PATTERSON, FINANCING MUNICIPAL SERVICES IN THE FACE OF CUTBACKS, Table 4 (1996).

⁶³ R.S.B.C. ch. 323 (1996).

⁶⁴ The Villages of Anmore, Belcarra and Lion's Bay, all with populations at or near 1,000, are notable examples in Greater Vancouver. The amalgamation of the District of Abbotsford and City of Matsqui in 1995 occurred as a result of a local referendum.

local councils, and they perform only those regional functions mutually approved by local councils and regional district boards.⁶⁵

Third, the provincial government has generally played a heavy hand in municipal administration. B.C. has chosen to intrude in local government affairs by manipulating the functions and powers of local governments rather than by creating or destroying local jurisdictions. It has also generally chosen to either administer additional functions directly or to create special commissions or boards, including provincial Crown agencies, to carry out specific functions. Thus, BC Transit supplies transit services throughout the province. Property tax assessment is carried out by the B.C. Assessment Authority. The Municipal Finance Authority ("MFA") has been delegated responsibility for approving and issuing debentures to finance local capital debt everywhere outside the City of Vancouver. The provincial Agricultural Land Commission ("ALC") has established Agricultural Land Reserves ("ALR") across B.C., and a more recently established commission performs the same function with respect to forest harvesting licences.

III. BRITISH COLUMBIA'S GROWTH MANAGEMENT STRATEGY IN THE LOWER MAINLAND

The B.C. Legislature adopted the Growth Management Act in June 1995. GVRD directors confirmed the "Livable Region Strategic Plan" ("LRSP"), its regional growth strategy plan, whose formulation preceded the Act by several years, in January 1996.⁶⁶ The twenty municipalities of Greater Vancouver, all of which approved the plan in principle, had until February 1998 to adopt "regional context statements" bringing Official Community Plans ("OCP's") into conformity with the regional growth strategy, or indicating how they intend to do so.⁶⁷ The Fraser Valley Regional District ("FVRD") is in the process of developing a regional strategic growth management plan for the upper reaches of the Lower Mainland.

For purposes of this analysis and appraisal, B.C.'s growth management is divided into three components. The first, consists of a series of policies and measures designed to preserve agricultural and other green spaces throughout the Lower Mainland. An Agricultural Land

⁶⁵ ANDREW SANCTON, *GOVERNING CANADA'S CITY REGIONS: ADOPTING FORM TO FUNCTION* 57-74 (1992).

⁶⁶ GREATER VANCOUVER REGIONAL DISTRICT, *THE LIVABLE REGION STRATEGY PLAN* (1996).

⁶⁷ R.S.B.C. ch. 323, § 866 (1996).

Reserve establishing limits to urban growth is the centrepiece of this set of policies. The second consists of the various plans and measures established under the auspices of the Growth Management Act. The two principal measures are the LRSP and a related component, Transport 2021, developed jointly by the GVRD and the provincial government, and adopted by the GVRD in 1993. The third component is the set of provincial measures implemented in support of the regional growth management plan. As explained above, successive B.C. governments have manipulated the municipal context to achieve provincial objectives. Two critical institutions in this respect are the Crown agencies ("Crowns") BC Transit, which provides public transit services across B.C.; and the Transportation Finance Authority ("TFA"), a Crown agency responsible for financing provincial highways.

A. *The Lower Mainland's Green (and Blue) Necklace*

As indicated above, topography and geography have combined to provide the Lower Mainland with a decentralized urban system interspersed with green and blue (water) spaces. About seventy percent of the 291,000 hectares included in the GVRD is non-urban.⁶⁸ Preserving this green and blue necklace appears to have been an objective of planners and local governments since the 1940s. The "necklace" replaces the urban service limit that might have been used to proscribe the limits of urban development in other city regions.⁶⁹

While much of this space is determined by nature rather than by humans, one of the most dominant components of the Lower Mainland's green spaces consists of an agricultural land reserve. Nearly sixty-five thousand hectares, or thirty percent of the GVRD's green zone, lies within the ALR.⁷⁰ In 1996, the ALR comprised about thirty-two percent of the territory included in municipal jurisdictions in the GVRD and was twelve percent greater than land in urban use.⁷¹ Nearly eighty percent of ALR lands, comprising over fifty percent of the area of the south-shore

⁶⁸ GREATER VANCOUVER REGIONAL DISTRICT, GREATER VANCOUVER'S LAND USE: 1979-1996, at 5 (April 1997).

⁶⁹ James R. Pease, *Oregon Rural Land Use: Policy and Practices*, in PLANNING THE OREGON WAY: A TWENTY YEAR EVALUATION 163-68 (Carl Abbott et al. eds., 1994).

⁷⁰ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, LAND WITHIN THE AGRICULTURAL LAND RESERVE BY REGIONAL DISTRICT AND MUNICIPAL JURISDICTIONS (Jan. 1996).

⁷¹ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 68.

municipalities, were south of the Fraser River.⁷² A further seventy-four thousand of ALR is included in the FVRD.⁷³ As in the case of other cities, this prime agricultural land is also usually prime for urban development. Certainly for most of the current owners and as a market commodity, this land is, on the whole, more valuable in urban than agricultural use.

Other components of the GVRD's green zone include the GVRD watershed reserve (45,843 hectares), recreation and wildlife parks and reserves (64,259 hectares) and a research forest (8,495 hectares) administered by the University of British Columbia. Nearly twenty-nine thousand hectares of water is included in GVRD municipalities.⁷⁴

1. *Agricultural Zoning*

Dominated by mountains, only about five percent of British Columbia is useful for agricultural purposes.⁷⁵ Although farming accounts for less than 1.5 percent of B.C.'s total GDPP (\$160 million in 1996),⁷⁶ it is worth noting that B.C.'s agricultural lands are comparable in size to the area of The Netherlands, the world's third largest agricultural exporter at over seventeen billion dollars annually.⁷⁷

Although the Lower Mainland contains only 139,000 hectares of farmland, or three percent of the province's total, the deposit of glacial till in the Lower Fraser prior to the extensive dyking of the 20th century, as well as a mild coastal climate and proximity to Vancouver, have made its farms among the most fertile and productive in the province.⁷⁸ Total farms in 1996 comprised nearly thirty percent of the provincial total.⁷⁹ Gross farm receipts were about fifty percent of the province's total. These farmlands possess considerable economic value, not to mention their ecological and aesthetic value.

Farmlands came under increasing pressure for urban development following World War II.⁸⁰ The partial picture available from Richmond illustrates the threat. Richmond occupies Lulu and Sea and several smaller

⁷² *Id.*

⁷³ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, *supra* note 70.

⁷⁴ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 68.

⁷⁵ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, PRESERVING OUR FLOODLANDS 4 (1993).

⁷⁶ STATISTICS CANADA, *supra* note 22, at FileD209636.

⁷⁷ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, *supra* note 75 (Speaking Notes and Remarks, The Honorable Michael Harcourt.)

⁷⁸ FRASER BASIN MANAGEMENT PROGRAM, APRIL CULTURE AND SUSTAINABILITY IN THE FRASER BASIN (Apr. 1997).

⁷⁹ *Id.*

⁸⁰ Wynn, *supra* note 33.

islands in the Fraser delta.⁸¹ Incorporated as a township in 1879, Richmond had begun to be settled by European farmers in the 1860s.⁸² Dyking of Lulu Island began in 1906. By 1930, half of Richmond's population of eight thousand still lived on farms that totalled over eight thousand hectares.⁸³ Less than five percent of Richmond, most associated with the fishing port and salmon cannery sites at Steveston, was devoted to urban uses.⁸⁴ Peat bogs accounted for most of the remaining forty-two hundred hectares.⁸⁵ By the late 1950s Richmond had become a suburb. With a population of twenty-six thousand in 1956, agricultural land had shrunk to sixty-four hundred hectares.⁸⁶ Urban and agricultural uses were thoroughly mingled in large parts of the municipality with only 451 operating farms remaining.⁸⁷ Urban uses had reached twenty-five hundred hectares, or twenty percent of the total. By 1996, ALR lands of about forty-nine hectares were thirty-seven percent of the total municipal area.⁸⁸ However, ALR data may understate the extent of agricultural decline. Farmland shrunk fifty percent from six thousand to three thousand from 1991 to 1996, although the number of working farms decreased only from 247 to 237 and cropland decreased by only slightly more than one percent.⁸⁹ Agricultural production appears to have fared slightly better more recently in other areas of the Lower Mainland, although Richmond's historical experience likely typifies the remainder of the Fraser lowlands.

The Lower Mainland Regional Planning Board had begun to take up the cause of agricultural land conservation in the 1950s.⁹⁰ However, there was little response from the provincial government. By the early 1970s, the NDP, then the Official Opposition, made the issue a major plank in the 1972 general election. On forming their first provincial government, the New Democrats moved rapidly to create a provincial agricultural zoning mechanism.

The Agricultural Land Commission Act was passed in late 1972.⁹¹ The Act establishes a five-person commission (chair and four commissioners) to be appointed for maximum terms (except no maximum term for a chair) and to serve

⁸¹ *Id.* at 79-85.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ STATISTICS CANADA, CENSUS OF AGRICULTURE, Table 33.10 (1996).

⁸⁹ *Id.* at Table 33.1; STATISTICS CANADA, CENSUS OF AGRICULTURE, Tables 24 and 27 (1991).

⁹⁰ B.C. LOWER MAINLAND REGIONAL PLANNING COMMISSION, OFFICIAL REGIONAL PLAN (1966).

⁹¹ R.S.B.C. ch. 10 (1996).

at the pleasure of the provincial cabinet.⁹² Commission decisions are subject to appeal to the cabinet and to the courts.⁹³ On assuming their second government in 1991, the New Democrats moved swiftly to amend the legislation to remove cabinet appeals, which its supporters felt had been abused by successive right-of-centre governments in the 1980s.⁹⁴

While Alterman's assertion in her 1997 review of agricultural regulations in six nations, including the U.S. and Canada, that the Canadian constitution states explicitly that regulation of property is non-compensable is clearly an exaggeration, it is nevertheless true that the takings issue cannot be taken to a federal court beyond provincial jurisdiction and that regulation of land as a branch of civil law is clearly within the competence of provincial legislatures and the municipalities to which planning powers have been delegated.⁹⁵

Local government is integral to the work of the commission to the extent that each regional district is required to file a land reserve plan and bylaw with the Commission.⁹⁶ Such a bylaw need not have the support of each municipal member of a regional district, although it would not be possible to pass a bylaw without the approval of a majority of regional district directors. Procedures for public hearings are also established in the Act.⁹⁷

The new Commission completed the initial designation of ALR lands in the Lower Mainland soon after mid-1974.⁹⁸ The basis for inclusion in the ALR is a combination of soil quality and use. Soils with agricultural capability are those in classes I through IV in a classification scheme devised by Environment Canada's Lands Directorate in the 1960s. The initial ALR in the Lower Mainland was 148,421 hectares (1,484 square kilometres).⁹⁹

ALR losses in the Lower Mainland in the nearly quarter of a century from 1973 through 1996 were nineteen percent of the initial reserve, a very large proportion but one that is smaller than in many other regional cities in North America.¹⁰⁰ Net losses were approximately seven percent of the initial ALR in

⁹² R.S.B.C. ch. 10, § 4 (1996).

⁹³ R.S.B.C. ch. 10, § 33 (1996).

⁹⁴ Hon. Michael Harcourt, Premier, Keynote Address, in BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, *supra* note 75; B.C. Reg. 449/92 (eff. Jan. 1, 1993).

⁹⁵ Rachelle Alterman, *The Challenge of Farmland Preservation: Lessons from a Six Nation Comparison*, J. AM. INST. PLANNERS, Spring 1997, at 226.

⁹⁶ R.S.B.C. ch. 10, § 12 (1996).

⁹⁷ R.S.B.C. ch. 10, § 12(2) (1996).

⁹⁸ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, CHANGES TO THE AGRICULTURAL LAND RESERVE IN THE LOWER MAINLAND OF BRITISH COLUMBIA 1974 to Jan. 1995.

⁹⁹ *Id.*

¹⁰⁰ Alterman, *supra* note 95.

the GVRD. About two-thirds of Lower Mainland losses were in the FVRD.¹⁰¹ Net losses have been less than two percent across the province, although gains outside the Lower Mainland are not necessarily equivalent in productivity to losses in the Lower Mainland.¹⁰² Government initiatives by both the ALC and regional districts, most based on planning reviews and related exercises, were responsible for three of every four hectares lost.¹⁰³ Private requests to the ALC were responsible for twenty-three percent. Only slightly over three percent of exclusions were granted on appeal, either by the ALC or by British Columbia courts.¹⁰⁴

The overall record is nevertheless usually regarded as a successful one. In the early 1980s, Ontario lost nearly seventeen thousand hectares of farmland to urban development, while British Columbia lost only twelve hundred.¹⁰⁵ In comparison, California reportedly loses twenty thousand hectares annually.¹⁰⁶ The program compares favourably with that in the State of Oregon, one of two U.S. states whose approach resembles B.C.'s, and which is generally regarded to possess a successful program as well. Oregon has established a target of six percent losses from 1970 to 2010. At the current rate of loss, even ignoring additions to ALR lands, B.C. will have experienced a 4.5 percent loss from 1975 to 2010.¹⁰⁷ Losses, mostly in the FVRD, have been about double this rate in the Lower Mainland.¹⁰⁸ The program has been especially successful in defining lands excluded from urban development in the GVRD.

Several improvements have occurred in recent years. The ALC incurred a notable loss in 1988 when the provincial cabinet passed an Order-in-Council establishing golf courses as a legitimate ALR use.¹⁰⁹ Golf courses proliferated in such GVRD areas as Langley and Surrey. That Order was rescinded in the first week of the newly elected NDP government in 1991.¹¹⁰ Subsequent amendments to the Act removed cabinet appeals and elected politicians from the ALR process. Only provincial courts may now alter Commission decisions. Right-to-farming legislation, which protects ALR farms from municipal

¹⁰¹ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, *supra* note 98.

¹⁰² BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, CHANGES TO THE AGRICULTURAL LAND RESERVE IN FIVE YEAR INCREMENTS WITHIN THE PROVINCE AND LOWER MAINLAND (1995).

¹⁰³ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, STATISTICS, Table A-1 (Jan. 1995).

¹⁰⁴ *Id.*

¹⁰⁵ Harcourt, *supra* note 94.

¹⁰⁶ Alterman, *supra* note 95.

¹⁰⁷ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, ANNUAL REPORT 11 (Apr. 1995-Mar. 1996).

¹⁰⁸ BRITISH COLUMBIA AGRICULTURAL LAND COMMISSION, *supra* note 102.

¹⁰⁹ Harcourt, *supra* note 94.

¹¹⁰ *Id.*

regulations as long as operations conform to accepted industry norms, was passed in 1995.¹¹¹

Of course, and as noted above with respect to Richmond, ALR designation does not guarantee that lands will be used for agricultural production. Province-wide, farmland use comprises fifty-three percent of the ALR, while it averaged nearly seventy percent in the Lower Mainland in 1996.¹¹² Farmland use and the number of farms in B.C. increased by seven percent and nineteen percent respectively from 1971 to 1996.¹¹³

2. *GVRD Watershed*

Beginning with the establishment of the Greater Vancouver Water District in 1912, nearly 460 square kilometres of land has been set aside in Coquitlam, North Vancouver, West Vancouver and Electoral Area "C" for Greater Vancouver's water supply.¹¹⁴ The watershed lands sustain the three man-made lakes that provide Vancouver's water. While commercial logging, an extension of the logging that had occurred since the 1890s, was permitted in watershed lands until the early 1990s, and the continued maintenance of fire roads and selected logging continues to be controversial, human use of the lands is otherwise generally prohibited.¹¹⁵

3. *Recreational and Protected Lands*

The largest component of the green zone (64,259 hectares, or nearly twenty-three percent of the GVRD's total land area) consists of parklands and conservation areas. Much of the land lies at higher elevations or on steep slopes or consists of wetlands in the Fraser estuary and might not be readily suitable for urban development in any event.¹¹⁶ It includes local, regional (GVRD) and provincial parks.

While most of the new parks were outside the GVRD, the provincial government acted in 1996 to set aside fourteen percent of the territory lying in the four Vancouver-centred regional districts for conservation purposes.¹¹⁷

¹¹¹ Farm Protection (Right to Farm) Act, R.S.B.C. ch. 23 (1995).

¹¹² STATISTICS CANADA, CENSUS OF AGRICULTURE, Table 33.1 (1996).

¹¹³ *Id.*

¹¹⁴ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 68.

¹¹⁵ PETER H. PEARSE, PLANNING FOR THE MANAGEMENT OF GREATER VANCOUVER'S WATERSHEDS (1995) (First report of the Scientific Review Panel).

¹¹⁶ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 68.

¹¹⁷ B.C. MINISTRY OF ENVIRONMENT, LANDS AND PARKS, ANNUAL REPORT 1996 (1996).

Amounting to some 5150 square kilometres and lying upwards to two hundred kilometres from downtown Vancouver, the new parklands are considered part of B.C.'s policy of setting aside a minimum of twelve percent of each eco-region in the province under the World Wildlife Fund's ("WWF") Protected Spaces program.¹¹⁸ Although the new commitment exceeds the minimum recommendation of the WWF, many environmental organisations assert that a greater commitment should have been made in B.C.'s most urbanised region in recognition of its recreation needs.¹¹⁹ As well, several large tracts of old growth forest sought by both logging companies and environmentalists were excluded from the new parklands.¹²⁰

4. *Research Forest*

The University of British Columbia maintains forestry research activities in a protected conservation area adjacent to Golden Ears Provincial Park and between the park and the ALR on the valley floor. Most of the eighty-five hundred hectares has been previously logged.¹²¹

5. *Blue Zone*

A green zone has long been a major part of growth management objectives in the Lower Mainland. As well, there is a growing appreciation of both the recreational potential and ecological value of Greater Vancouver's waterfront lands. While Vancouver is well known for its marine beaches, the Fraser was generally viewed as a "working river" and was lined for the most part with wood and paper industries and other industrial lands.¹²² The sediment in the river has generally made it unattractive for recreation. From 1976 to 1982 alone, some twenty-eight percent of wetlands in the Lower Mainland were removed.¹²³

That both transportation and the fishery and thus both the Fraser River and Burrard Inlet are largely in federal jurisdiction long prevented local and provincial planning of shore-lands. In a new spirit of cooperation, the Fraser

¹¹⁸ British Columbia Ministry of Lands, Parks and Environment, *supra* note 5.

¹¹⁹ Robert Matas, *B.C. Sets Aside Land for 23 New Parks in Lower Mainland*, GLOBE & MAIL, Oct. 29, 1996.

¹²⁰ Jack Christie, *Stoltzmann's Size Still Rankles*, GEORGIA STRAIGHT, July 17, 1997.

¹²¹ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 68.

¹²² FRASER BASIN ESTUARY MANAGEMENT PROGRAM, A LIVING WORKING RIVER: AN ESTUARY MANAGEMENT PLAN FOR THE FRASER RIVER (1994).

¹²³ WETLANDS IN DANGER: A WORLD CONSERVATION ATLAS 63 (Patrick Dugan, ed., 1993).

Basin Council and the Fraser River Estuary Management Program ("FREMP"), both non-governmental organisations with local municipal, provincial, and federal participation, have provided a vehicle for cooperation in water and shore use by the three levels of government.¹²⁴ The former, largely an advocacy and research organization, is committed to a sustainable development program for the entire basin, while the latter works closely with government regulators in co-ordinating shore and water uses throughout the Fraser estuary from Roberts and Sturgeon Banks upstream to Maple Ridge. FREMP's major achievement has been the publication of a plan and guidelines aimed towards a better balance between the "working river" and ecological objectives.¹²⁵

B. A Positive Growth Management Program in Greater Vancouver

The ALR provides a "line in the sand" which urban centres may not transgress. It does little to promote efficient or any other form of urban growth. Some observers have even asserted that the ALR has prevented the development of more efficient urban forms.¹²⁶ Nor has it necessarily placed severe limits on urban growth. Over nineteen percent of a GVRD that was then half its area was classed as vacant in 1979.¹²⁷ This proportion decreased to twelve percent (16,070 hectares) by 1996.¹²⁸ An average of slightly more than six hundred hectares per year was lost to urban growth through the period from 1979 to 1996.¹²⁹ Extension of the rate of loss of vacant and developable land into the future indicates that vacant land in the pre-1990 GVRD would be exhausted in about twenty years.¹³⁰ It would take considerably longer, perhaps upwards to four times as long, to occupy completely the vacant land in the larger GVRD that includes the Langley municipalities, Maple Ridge and Pitt Meadows which were added in the 1990s.¹³¹ About eighteen percent of the current GVRD was classed as vacant in 1996.¹³²

¹²⁴ FRASER BASIN ESTUARY MANAGEMENT PROGRAM, *supra* note 122.

¹²⁵ *Id.*

¹²⁶ Ralph Perkins, *What's Happening in the Suburbs of Greater Vancouver?*, CITY MAGAZINE, 14.3 1993, at 20, 21.

¹²⁷ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 68.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

While there was a tendency towards denser development with contemporary growth pressures and following enactment of the Agricultural Land Commission Act, the availability of suitable vacant, developable land outside both the ALR and the "green zone" on the urban fringe made possible continued development of low-density single family homes.¹³³ Over eighty-five percent of increased residential land use in the older GVRD from 1979 to 1996 was classed as single family/duplex, although this represents a significant decrease from the ninety-four percent in 1979.¹³⁴ Over ninety percent of residential land use in the enlarged GVRD in 1996 was single family/duplex in 1996.¹³⁵

1. *Issues Underlying a Renewed Interest in Growth Management*

A variety of interrelated concerns, mainly ecological and fiscal, but also demographic, led to an increased interest in growth management in the early 1990s. The demographic issue facing the Lower Mainland is: where to accommodate the region's future population? As noted above, the GVRD's population is projected to increase by sixty-five percent to reach over three million by 2021.¹³⁶ Municipalities south of the Fraser River which contained twenty-eight percent of the region's population in 1961 accommodated fifty-three percent of growth from 1961 to 1991 and, should trends continue, are projected to account for nearly seventy percent of the 1991-2021 growth.¹³⁷

Accommodating these trends raises both fiscal and ecological concerns. A fiscal concern is the road and utility infrastructure required to serve the new population. Notably, travel grew faster than population from 1985 to 1992.¹³⁸ While population increased by twenty-one percent from 1985 to 1992, rush hour trips increased by thirty-seven percent.¹³⁹ The transit share of rush hour trips decreased from 11.2 to 9.9 percent.¹⁴⁰ Transit's share of trips to downtown Vancouver decreased from thirty-five to thirty-one percent,¹⁴¹ while automobile dependence for work trips increased. Suburb to

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 45.

¹³⁷ *Id.*

¹³⁸ GREATER VANCOUVER REGIONAL DISTRICT, GREATER VANCOUVER TRAVEL SURVEY: COMPARISON OF TRAVEL DEMAND CHARACTERISTICS, 1985-1992 (1992).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

suburb rush hour trips increased by four percentage points to sixty-four percent.¹⁴² Suburb to downtown trips decreased by almost three points to twelve percent of total rush hour trips. People travelled further and longer. Average trip length increased by twelve percent to fourteen kilometres. Average trip speed decreased by seven percent to 34.7 kilometres per hour, and average trip time increased by twenty percent to twenty-four minutes.¹⁴³ Areas south of the main stem of the Fraser River that contain forty-nine percent of the region's projected 2021 population are also projected to contain only thirty percent of employment.¹⁴⁴ The cost of accommodating commutes across the Fraser River would place large demands on the capacity of both provincial and local governments. Yet, if Greater Vancouver were to grow primarily by way of low-density single family development, the south and east pose fewer impediments to growth than other areas.

There are also serious ecological concerns. Air pollution was uppermost in many people's minds in the early 1990s. The summer of 1988 saw record pollution in the Fraser Valley.¹⁴⁵ Days of poor air quality, due mostly to low-level ozone concentrations exceeding maximum tolerable concentrations, increased from nine in 1985, four in 1986, and none in 1987, to sixty-six in 1988, exceeding every other Canadian city.¹⁴⁶ While the pollution levels of 1988 may not be revisited again, Greater Vancouver's pollution levels nevertheless ranked 4th highest of Canada's 25 Census Metropolitan Areas ("CMA's") for the five year period from 1990 to 1995.¹⁴⁷ Similar to geographical/meteorological impacts in Los Angeles, the mountains east of Vancouver result in even worse air quality in the eastern reaches of the Fraser Valley than in the metropolitan centre. Vancouver was the only major city in Canada whose air quality, as measured by days of exceedences of good air quality, declined from the late 1980s to the early 1990s.¹⁴⁸ This concern and the knowledge that car dependence and low-density suburban development were ultimately major causes of pollution began to permeate popular concerns. Concern for greenhouse gas ("GHG") emissions from burning fossil fuels also began to galvanize public concern. The City of Vancouver instructed its own task force to recommend ways to

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ GREATER VANCOUVER REGIONAL DISTRICT, AMBIENT AIR QUALITY ANNUAL REPORT (1995).

¹⁴⁶ *Id.*

¹⁴⁷ *How Clean Are Our Cities? A 25 City Report Card on Air and Water Quality*, CHATELAIN MAGAZINE, Oct. 1996, at 51, 57.

¹⁴⁸ *Id.*

reduce pollution and GHG emissions.¹⁴⁹ B.C. is the only Canadian province with an official objective of reducing GHG emissions in the 1990s.

All of these concerns motivated the GVRD and its directors to consider a process for better managing regional growth even before the provincial government passed the Growth Management Act in 1995.¹⁵⁰

2. *Antecedents to the Growth Management Act*

While the "Livable Region Strategic Plan" and the related transportation plan, "Transport 2021," were not approved by GVRD directors until the 1990s, they were preceded by significant regional planning efforts. Regional planning and growth management, however, were forced into temporary retirement when Bill 9, the Municipal Amendment Act, eliminated the regional planning authority of regional districts in 1983.¹⁵¹ The principal implication of this Act was that from 1983 to 1995 planning would be the sole prerogative of the provincial government and local municipalities.¹⁵² Any co-ordination of actions by municipalities was entirely voluntary.¹⁵³ Despite Bill 9, the GVRD's municipalities maintained a regional strategic development and research services department and co-operated in pursuing many of the objectives of the Livable Region Plan that had been adopted in 1976 as the region's official plan.¹⁵⁴

The idea of planning initially came to Vancouver early. The British Columbia Legislature first authorised municipal land use zoning in the early 1920s and then a Town Planning Act in 1925.¹⁵⁵ Noted U.S. planning consultant Harland Bartholomew was hired to produce a comprehensive plan for the City of Vancouver in 1926. The establishment of a Regional District for Water and Sewer Services acknowledged the regional nature of these services.¹⁵⁶ Its initial priority was the damming of the north shore streams, the basis for the current 450 square kilometre

¹⁴⁹ CITY OF VANCOUVER, CLOUDS OF CHANGE: FINAL REPORT OF THE CITY OF VANCOUVER TASK FORCE ON ATMOSPHERIC CHANGE (1990).

¹⁵⁰ GREATER VANCOUVER REGIONAL DISTRICT, THE LIVABLE REGION STRATEGIC PLAN: CREATING OUR FUTURE... STEPS TO A MORE LIVABLE REGION (1993).

¹⁵¹ Municipal Amendment Act (1983).

¹⁵² GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 150.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ An Act Respecting Town Planning (1925).

¹⁵⁶ STATISTICS CANADA, CENSUS OF AGRICULTURE Tables 24 and 27 (1991); STATISTICS CANADA, CENSUS OF AGRICULTURE Table 33.1 (1996).

watershed reserves, to supply water to the entire region. The Lower Mainland Regional Planning Board ("LMRPB") with jurisdiction over the entire Fraser Valley from Boundary Bay 160 kilometres upstream to the Fraser canyon at Hope was established in 1949.¹⁵⁷ The first regional official plan was adopted in 1966. A year later the provincial government created the Greater Vancouver Regional District.¹⁵⁸ Concerned that authorities not proliferate, as well as with the power of the LMRPB and its lack of accountability to local governments, the Board was abolished.¹⁵⁹ Planning was made a mandatory function of the new regional districts. This decision was also a way out of an impasse between the Board and the provincial government over development priorities in Delta.¹⁶⁰

Under the GVRD's aegis the notion of a liveable region gradually emerged. In the 1970s, *The Livable Region, 1976-1986*, outlined a five-part strategy for managing growth.¹⁶¹ The Official Regional Plan was updated in the 1980s, focusing on co-ordination of transportation and land use.¹⁶² Bill 9 was passed by the B.C. Legislature when the GVRD refused to incorporate a new container port being jointly planned in the District of Delta by the Port of Vancouver and B.C. Rail into the Official Plan.¹⁶³ As well, municipalities south of the Fraser River were generally concerned that the City of Vancouver was using its weight in the GVRD to further its own ends at their expense.¹⁶⁴ The new premier in a right-of-centre government was a former mayor of Surrey, one of those communities, as well as a major land owner and developer in Richmond, another of the communities south of the Fraser River.¹⁶⁵

In July 1990, the GVRD Board continued the tradition of the 1960s and 1970s plans by adopting "Creating Our Future: Steps to a More Livable Region." Soon after forming a new government in 1991, the New Democratic premier, a former Vancouver mayor, committed his government to bringing regional planning back to B.C.¹⁶⁶

¹⁵⁷ Interview with Gary Paget, B.C. Ministry of Municipal Affairs and Housing Staff, Victoria, B.C. (Aug. 28, 1997) [hereinafter Paget Interview].

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 66.

¹⁶² Paget Interview, *supra* note 157.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Interview with Darlene Marzari, former Minister of Municipal Affairs, Vancouver, B.C. (Sept. 15, 1997) [hereinafter Marzari Interview].

3. *Models for Growth Management*

A decade in which regional planning in B.C. lacked authority if not legitimacy gave planners ample opportunity to consider the model of regional planning and growth management that was most appropriate for B.C. and the Lower Mainland. The formal demise of regional planning in 1983 and the previous demise of the LMRPB in favour of more de-centralized regional planning by the then four regional districts in the Lower Mainland had made planners and municipal administrators keenly aware of both the potential opposition to imposition of the regional will over local municipalities and the importance of links between the minority municipalities and provincial government, certainly in the GVRD.¹⁶⁷ Sentiment was moving towards a model of regional planning that placed greater emphasis on consensus and consensual processes. These were the only forms of planning—loosely defined—that could occur from 1983 to 1995. The Minister after 1993, Darlene Marzari, her ministry (Municipal Affairs) and Lower Mainland officials resolved that a “made-in-B.C.” model of regional planning and growth management, a model that addressed and accommodated the fierce localism rampant in local municipalities, would have to be developed.¹⁶⁸ “Growth management” was judged to be preferable to “planning.” Local municipalities were responsible for adopting Official Community Plans (“OCP’s”), the primary land use planning instrument in B.C., and jealously guarded the planning label.¹⁶⁹

The model adopted differs from those of other jurisdictions in several respects. The provincial government plays a more minor role than in many other growth management jurisdictions, although its role in delineating agricultural lands and, as is described below, in articulating the regional transportation system, have nevertheless made it more than a minor player in growth management. Further, regional strategic plans, when prepared, must meet the objectives and substantive expectations set forth in detail in the Growth Management Act.¹⁷⁰

More importantly, regional districts are not able to dictate overall growth management priorities in the face of conflict between the regional strategic plan and the regional context statements of local municipalities. Both parties are bound by the results of one of three binding dispute

¹⁶⁷ Paget Interview, *supra* note 157.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ R.S.B.C. ch. 323, §§ 849, 850 (1996).

resolution processes.¹⁷¹ The minister chooses one of three mechanisms should the parties not be able to agree on one at the pre-resolution stage.

Following the overall regional district model in which the provision of specific services is dependent on the mutual agreement of member municipalities and the board's directors, B.C.'s Growth Strategies Act is largely enabling in character. The Minister of Municipal Affairs may require the preparation of a regional strategic plan.¹⁷² In contrast, under Washington State's 1990 Growth Management Act, plans are mandatory in the largest and fastest growing counties.¹⁷³ Also, under the 1973 Oregon Land Conservation and Development Act, growth management is mandatory throughout the state, including the jurisdiction of Metro Portland area established in 1992.

Both provinces and states require some form of environmental assessment. B.C.'s Environmental Assessment Act provides a legislative framework for review of both major infrastructure and land use projects.¹⁷⁴ Ontario's environmental legislation imposes environmental impact assessment on local government infrastructure, but not land use.¹⁷⁵ Washington's State Environmental Policy Act ("SEPA") imposes environmental impact assessment on local governments,¹⁷⁶ although there are no requirements in Oregon.

4. *GVRD's Growth Management Strategy*

Two documents, the "Livable Region Strategy Plan" and "Transport 2021," currently contain the GVRD's substantive growth management policies.¹⁷⁷ The former is deliberately brief. The GVRD focused its efforts on gaining approval by all twenty local municipalities of a structure of land use, transportation facilities, and municipal targets for both ground-oriented housing and apartments and for employment.¹⁷⁸ In addition, the plan contains a summary of principles protecting the green zone, supporting the public's strong desire for communities with a wider range of opportunities for daily life, achieving a compact metropolitan region, and increasing transportation choice.¹⁷⁹ Underlying the substance of the strategy plan is the funnelling of a

¹⁷¹ R.S.B.C. ch. 323, §§ 860-62 (1996).

¹⁷² R.S.B.C. ch. 323, § 852 (1996).

¹⁷³ R.C.W. § 36.70.040 (1997-98).

¹⁷⁴ R.S.B.C. ch. 119, § 3 (1996).

¹⁷⁵ O.R.S. Chpt. E-19, Part 3 (1990).

¹⁷⁶ R.C.W. § 43.21C (1983).

¹⁷⁷ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 66; TRANSPORT 2021, A LONG-RANGE TRANSPORTATION PLAN FOR GREATER VANCOUVER (1993).

¹⁷⁸ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 45.

¹⁷⁹ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 66.

substantial portion of incremental population growth to a Growth Concentration Area and the development of sub-regional employment and commercial centres on a scale sufficient that they may be effectively served by public transit.¹⁸⁰

The strategy plan focuses on altering trends prevailing over the decade of the 1980s and very early 1990s. The plan envisages directing fourteen percent of the projected regional population (410,000 population and forty percent of projected growth from 1991 to 2021) from the fringe areas of Richmond, the southern parts of Delta and Surrey, the Langleys and communities in the FVRD to the Growth Concentration Area containing Vancouver and the suburban municipalities of Burnaby, Coquitlam, New Westminster, Ports Coquitlam, and Moody, as well as the northern parts of Delta and Surrey.¹⁸¹ The expectation is that this will be accomplished by local municipalities either decreasing or increasing, as the case may be, land available for development per their OCP's.

The substance of sections devoted to each of the above topics stresses the development of partnerships, not only between local municipalities and the GVRD and each other, but also with the federal and provincial governments whose cooperation is viewed as essential to achieving plan objectives. The region is viewed as having a positive role to play in enhancing the environmental quality of the Georgia and Fraser River basins.¹⁸² Partnerships with the development industry are viewed as essential to realizing the sub-regional commercial and employment centres and to developing "complete" communities.

The companion piece, *Transport 2021*, documents the erosion of public transit use and the connection between increased automobile reliance and not only sparser residential settlement, but also decentralization of employment.¹⁸³ Regional sub-centres would theoretically allow a large enough agglomeration of destinations that could be effectively served by enhanced public transit. A transportation demand management ("TDM") strategy consisting of high occupancy vehicle ("HOV") lanes, tolls, and parking and regional gasoline taxes is considered to be an essential component of the overall strategy, as well as a source of financing for infrastructure development. Growth concentration, also supported by TDM,

¹⁸⁰ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 45, Part 4.

¹⁸¹ *Id.*

¹⁸² FRASER BASIN ESTUARY MANAGEMENT PROGRAM, *supra* note 122.

¹⁸³ *TRANSPORT 2021*, *supra* note 177.

is viewed as critical in creating threshold residential densities that could be more effectively served by major new light rail transit ("LRT") facilities.¹⁸⁴

Models developed by the GVRD's transport planning organization indicate that the residence shifts proposed would have significant impacts on the performance of the transport system. Total distances travelled by all vehicles would increase by fifty-five percent from 1991 levels, but be seventeen percent less than trend projections.¹⁸⁵ The number of transit passengers would increase sixty-two percent over the projected trend line number and two to three times 1991 levels, thus justifying the spending of nearly an additional \$200 million annually to amortize new transit capital investments to build new LRT lines and increase the size of the bus fleet.¹⁸⁶

C. *Provincial Growth Management Tools*

As has been stressed throughout, the provincial government possesses a considerable stock of policies and programs that may be used to support its and the two Lower Mainland regional districts' growth management objectives. However, it also has considerably less latitude and leverage than in past times. Practically all conditional municipal grant programs that could have been used to discipline the planning decisions of local councils have been eliminated. Capital grants for water and sewer infrastructure projects, which were nearly universal until 1982, have shrunk to two-thirds of their early 1980s levels.¹⁸⁷ A 1995 survey of municipalities by B.C.'s Municipal Finance Agency ("MFA") indicated that municipalities anticipated that grants would pay only about five percent of capital works budgets over the 1996-2000 period.¹⁸⁸ Remaining provincial funds are generally reserved for major filtration and treatment and trunk line projects by regional districts. A 1996 budgetary initiative proposed the elimination of continued provincial support for the secondary highway system, potentially an important provincial lever.¹⁸⁹ Another initiative reduced unconditional grants, already the lowest in Canada, by over forty percent.¹⁹⁰ The federal government withdrew support for new social housing initiatives in 1994, and provincial

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ B.C. MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING, ANNUAL REPORT (1994-95).

¹⁸⁸ PATTERSON, *supra* note 62.

¹⁸⁹ B.C. Ministry of Finance (Media Communication), Nov. 27, 1996.

¹⁹⁰ *Id.* Saskatchewan subsequently reduced unconditional municipal transfers to lower levels. While there have been significant transfers of fiscal responsibilities from the provincial to the municipal level in Ontario, that province maintains a considerable program of fiscal transfers to municipalities.

support has been reduced by almost fifty percent to eight hundred units annually.¹⁹¹

BC Transit and the associated Crown ("corporation") responsible for financing highway infrastructure, the Transport Finance Authority ("TFA"), remain the provincial government's primary levers with respect to managing urban growth. As a result of the provincial role Greater Vancouver is currently the only city in Canada that is not required to subsidize local transit services from residential property taxes.¹⁹² The provincial service, also unique in Canada, has also made the region the only major city with a region-wide integrated transit system.¹⁹³ Annual transit subsidies are approximately \$250 million, fifty percent of BC Transit's total operating costs, including amortization of approximately \$1.8 billion in debt.¹⁹⁴ Another fifteen to twenty percent of revenues is derived from region-specific gasoline taxes and other levies authorized by the provincial government.¹⁹⁵ Thirty to thirty-five percent of revenues are derived from user fares or fees.¹⁹⁶ In addition to determining the total amount to be raised from users, BC Transit also determines the structure of local fares.¹⁹⁷ Each of these variables is a potential lever that may be used to further provincial objectives. Individual major works may also be used as a carrot to elicit desired behaviour by local municipalities.¹⁹⁸

Future transit projects are also a significant provincial lever. The City of Coquitlam, approximately twenty-five kilometres east of downtown Vancouver, and Coquitlam Town Centre are currently planned to be the destination for two light rail transit ("LRT") lines by the year 2006.¹⁹⁹ A part of the LRSP's Growth Concentration Area, its council has recently completed OCP changes that will allow it to accommodate the growth anticipated in the GVRD's "Livable Region Strategy Plan."²⁰⁰ The City of Richmond is similarly competing for a subsequent LRT line.²⁰¹ Other municipalities in which major transit works are contemplated will be aware of the value of the lever.

¹⁹¹ B.C. MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING, *supra* note 187.

¹⁹² CANADIAN URBAN TRANSIT ASSOCIATION, OPERATING CHARACTERISTICS OF MEMBER SYSTEMS: 1996 OPERATING DATA (1996).

¹⁹³ Interview with Glen Leicester, Executive Director of Strategic Planning, B.C. Transportation Finance Agency, Surrey, B.C. (Aug. 21, 1997) [hereinafter Leicester Interview].

¹⁹⁴ B.C. TRANSPORTATION FINANCE AUTHORITY, ANNUAL REPORT 1995-1996 (1996).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ TRANSPORT 2021, *supra* note 177.

²⁰⁰ City of Coquitlam, by-law 3199 (1997).

²⁰¹ TRANSPORT 2021, *supra* note 177.

The TFA is a similar lever. Its recent activities have included the elimination of "bottle necks" in regional road systems. With the exception of a program for sharing the capital cost of bicycle facilities, the TFA is currently limited to financing provincial highways.²⁰² Continued qualification of regional roads as suitable projects would increase the leverage available to the provincial government.

However, it would be an understatement to say that there is local concern over some of the province's and BC Transit's decisions. Transportation supply decisions, especially with respect to construction of SkyTrain from downtown Vancouver through the suburbs of Burnaby and New Westminster to Surrey Town Centre and the West Coast Express commuter train service to Mission in the FVRD, are viewed by some observers as having been detrimental to local bus services in the long-term.²⁰³ Other observers sight a shift in resources (buses) from well-used urban routes to under-used suburban lines as a major issue.

Transit ridership is lower and has decreased significantly relative to other Canadian systems from 1986 (a peak year for transit ridership in Canada) to 1994.²⁰⁴ While the number of riders per capita decreased by an average of twenty-six percent for Calgary, Montreal, Ottawa, and Toronto, riders per capita decreased by thirty-five percent for Vancouver.²⁰⁵ Vancouver's ridership decreased from fifty percent of the average of the other four cities in 1986 to forty-four percent in 1994.²⁰⁶ Ridership was thirty-eight percent greater than for Calgary in 1986, but three percent less in 1994.²⁰⁷ Equipment shortages and low service levels are frequently viewed as a major reason for low ridership in Vancouver. Comparative data for Canada's transit systems indicate that BC Transit has likely always made do with less equipment than other major systems. Buses per capita were thirty percent less than for the other four systems in 1994 despite an increase of fifty-four percent in Vancouver and thirty-four percent in the other four cities.²⁰⁸ Regardless of all of the reasons for relatively poor performance, it seems that BC Transit has not been able to keep up with the needs and demands in the rapidly growing Vancouver region. The comparative data on transit ridership likely also reflect the impact of newer, sparser

²⁰² B.C. TRANSPORTATION FINANCE AUTHORITY, *supra* note 194.

²⁰³ *SkyTrain Spending Short-Changes Buses*, VANCOUVER SUN, July 8, 1998.

²⁰⁴ CANADIAN URBAN TRANSIT ASSOCIATION, CANADIAN TRANSIT FACT BOOK (1986); CANADIAN URBAN TRANSIT ASSOCIATION, CANADIAN TRANSIT FACT BOOK (1994).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

development on transit ridership that all cities have experienced to one extent or another.²⁰⁹

Obtaining deference by both the provincial and federal governments to Greater Vancouver regional interests, as expressed by the GVRD and local municipalities, is viewed as essential. Moreover, a strong and unified front by the twenty member municipalities of the GVRD is viewed by many observers as necessary to achieving regional objectives in partnership with the provincial government.²¹⁰

In addition to transportation projects, the provincial government's designation of sites for parks and wildlife habitat conservation, as well as agricultural and forestry zoning have been critical in supplying the "green necklace" that has been the fabric providing the pattern and bounds of local urban development.

IV. FUTURE GROWTH MANAGEMENT ISSUES IN THE VANCOUVER REGION

As indicated above and stemming in part from the role of inter-municipal disputes in major decisions prejudicial against a regional planning role in 1968 and 1983, there is a strong emphasis in the Growth Management Act and in the LRSP on partnerships and on dispute resolution. All twenty GVRD municipalities approved the current plan. There are strong indications that major conflicts were only temporarily buried when the plan was approved in 1995.

A. *Growth Management and the Status of Official Community Plans*

Three municipalities had reservations to the "Livable Region Strategy Plan." Agreements were signed between the three municipalities and the GVRD to mitigate the import of the disagreements until at least after the submission of Regional Context Statements required to be submitted in February 1998. The City of Surrey and the District of Langley expressed concern that the regional strategy plan would impinge on the prerogative of local municipalities over land use decisions in their municipalities.²¹¹ Side agreements with both municipalities enabling adoption of the regional strategy plan clarified that the OCP's and related zoning powers stemming therefrom

²⁰⁹ *Id.*

²¹⁰ Marzari Interview, *supra* note 166.

²¹¹ GREATER VANCOUVER REGIONAL DISTRICT, SUMMARY OF COMMENTS: LIVABLE REGION STRATEGY PROPOSALS (1994).

were the only statutory authority for development.²¹² Any challenge to the OCP's of the two municipalities would, of course, have to await a dispute resolution mechanism that might follow the Regional Context Statement submissions in 1998 should they be in conflict with the plan.²¹³

The potential disputes between the GVRD and local municipalities present a major challenge to the growth management strategy plan. In the case of Langley District and Surrey, the projected trend population for the two municipalities for 2021 is 175,000 greater than under the strategic plan.²¹⁴ Following the trend line would presumably result in increased auto and less transit travel than projected in the plan. It would also potentially undercut the wisdom of the immense transit projects currently planned for the coming decade and place additional burdens on bridge capacity.²¹⁵

The potential challenge to the growth strategy plan will test the resolve of both the provincial government and the directors of the GVRD, the local politicians of the member municipalities. While only a few municipalities are currently challenging the principles underlying the regional strategic plan, the majority of directors appear reluctant to interfere in each other's land use decisions. For instance, in September 1997, the GVRD approved extension of trunk sewer facilities, one of the services for which the regional district is responsible, to serve a part of the suburb of Langley not yet considered ready for development despite recommendations to the contrary from both regional planners and the ALC and despite a requirement in the Growth Strategies Act that requires that all works and services undertaken by a regional district after adoption of a regional growth strategy be consistent with the regional growth strategy.²¹⁶ Responding angrily to the planners' report, the mayor of Langley with strong support from the mayor of neighbouring Surrey again reiterated that land use regulation was a municipal, not a regional, function.²¹⁷ The chair of the GVRD's strategic planning committee and mayor of Delta, Beth Johnson, indicated that she was concerned that directors had not yet confronted the issue of denying services as a way of forcing urban development in desirable directions.²¹⁸

In newer suburb Pitt Meadows, the mayor and a quorum of councillors held an emergency Sunday meeting of council in September 1997 to rescind a

²¹² *Id.*

²¹³ R.S.B.C. ch. 323, § 861 (1996).

²¹⁴ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 45.

²¹⁵ *Id.*

²¹⁶ R.S.B.C. ch. 323, § 865(1).

²¹⁷ VANCOUVER SUN, Sept. 19, 1997, at B-3.

²¹⁸ *Id.*

by-law requiring referendums on council decisions upon petition of fifteen percent of the electorate.²¹⁹ A petition reportedly containing signatures of about forty percent of the qualified electorate opposing council approval of an isolated new development adjacent to the ALR was scheduled to be formally presented to council's regularly scheduled meeting on the following day.²²⁰ The petitioners were opposing development approval for a new subdivision which, though not part of the ALR, was surrounded by ALR. The development had been opposed by the ALC, citing the possible impact on the ALR lands. The Council eventually deferred to the petitioners in this instance.²²¹

B. The Provincial Government and the Administration of Municipal Functions

The disagreement between the GVRD and Richmond is more particular and involves much more than a disagreement on the location of new growth within the GVRD community. Richmond centre, a regional growth centre under the regional strategic plan, lies on Lulu Island, fifteen kilometres south of downtown Vancouver. The City's objection to the LRSP was that it was not a part of the Growth Concentration Area despite its proximity to and its nine kilometre shared border with Vancouver.²²² The GVRD's refusal to designate Richmond a part of the Growth Concentration Area and also an initial destination for a new LRT route from downtown Vancouver despite favourable feasibility studies going back to 1987 has a twofold basis. Studies of other regions have resulted in concern for the potential impact of a possible future seismic event on the sedimentary soils of Lulu Island. As well, all of Lulu Island is a part of the Fraser River flood plain and was inundated by the major flood of 1894.²²³ While dykes initiated in 1906 continue to protect the City and have withstood such subsequent events as the 1948 flood, the largest event since the earlier flood, there is continued concern regarding the concentration of further growth on the Island and its potential for inundation from a major flood event, such as those affecting the Missouri and Mississippi valleys in 1993 and the Red River valley in Manitoba and North Dakota and the Oder Valley in Germany and Poland in 1997, or a seismic-

²¹⁹ Harold Munro, *GVRD, Port Moody at Odds Over Population Growth*, VANCOUVER SUN, Mar. 30, 1998.

²²⁰ *Id.*

²²¹ *Id.*

²²² GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 211.

²²³ FRASER BASIN COUNCIL, *REVIEW OF THE FRASER RIVER FLOOD CONTROL PROGRAM* (1994).

induced water event that might come from the marine side of Lulu Island. It seems clear from background documents²²⁴ that the GVRD would be satisfied if the provincial government, which is the main party responsible for ensuring compliance with flood and environment regulations, would confirm that Richmond is adequately protected or order further measures to mitigate future risks.

The Fraser Basin Council published reports in 1994 and 1996 which also echoed concern for future flooding in Richmond and other dyked parts of the Fraser valley.²²⁵ The Council predicts a one in three chance that there will be a flood exceeding the 1894 level in the subsequent sixty years.²²⁶ It posits plans for reinforcing existing dykes, possibly constructing a mid-island (Lulu Island) dyke should a flood event overcome the Island's upstream dykes, and possibly flood-proofing the historic community that has heretofore been exempted from provincial flood-proofing regulations by virtue of its historic status.²²⁷ The Council calls for a new, integrated flood hazard management program in the second of the two reports.²²⁸ While the ultimate burden for hazard management would lie with the City of Richmond and other cities with portions of their territory lying on the Fraser River flood plain, the initiative to launch the process lies with the provincial ministries of Municipal Affairs and Housing and Lands, Environment and Parks.²²⁹

Richmond's population increase averaged over 2.5 percent annually from 1991 to 1996 and approximated 150,000 in 1997.²³⁰ The LRSP allocated a population of 184,000 to Richmond in the year 2021.²³¹ The trend line population is 224,000.²³² In mid-1997, the Richmond council was anticipating amendments to the OCP that would accommodate the trend line population.²³³ While officials expect intense discussions with provincial and GVRD officials regarding flood and seismic mitigation measures and insist that they have generally acted in a responsible way to environmental risks, they have also clearly indicated that they will implement new measures or works if their need is proven.²³⁴

²²⁴ *Id.*

²²⁵ *Id.*; VANCOUVER COUNCIL, INTEGRATED FLOOD HAZARD MANAGEMENT STRATEGY (1996).

²²⁶ VANCOUVER COUNCIL, *supra* note 225, at 3,4.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ STATISTICS CANADA, CENSUS CANADA (1991); STATISTICS CANADA, CENSUS CANADA (1996).

²³¹ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 45.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

The issues at hand transcend the GVRD's growth management strategy. Withholding approval to include Richmond in the Growth Concentration Area merely served to bring the issue to the fore. The regional strategic plan nevertheless provides a good illustration of the challenges facing the region.

C. Regional Subcentres and Reduced Auto-Dependence

A review of progress in achieving the various substantive objectives of the plan revealed that some may be more ambitious than can be realized, although it is too early to draw definitive conclusions. Employment in regional sub-centres is reportedly growing more slowly than projected.²³⁵ That is, market forces to this point are supporting greater dispersal in employment locations than contained in the LRSP. The regional sub-centre in northern Surrey, the current terminus for SkyTrain, is attracting only small amounts of development relative to planning capacity. In the light of these market developments, Surrey may assert the need to foster development in four other centres that would not be as easily or effectively served by public transit, although their development may make sense from the point of view of "complete" communities within Surrey.²³⁶

D. Accommodating Greater Populations in Mature Communities

While the GVRD's mature communities in the Growth Concentration Area generally contain adequate and suitably zoned land to accommodate projected populations in the LRSP, several do not have sufficient suitably zoned land to accommodate the need for ground-oriented housing.²³⁷ Up zoning of parts of single family districts will eventually be required to satisfy targets for ground-oriented housing.²³⁸

E. Transit Supply

BC Transit has fallen behind its current five-year plan for equipment acquisition, partially as a result of shortages in provincial capital.²³⁹ At the

²³⁵ Interview with Rick Perkins, GVRD Regional Strategic Planning Staff, Burnaby, B.C. (Aug. 11, 1997) [hereinafter Perkins Interview].

²³⁶ City of Surrey, by-law 13331 (1998).

²³⁷ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 66.

²³⁸ *Id.*

²³⁹ Elizabeth Aird, *B.C. Government has Forced Service Reduction in B.C. Transit*, RICHMOND REV., Oct. 19, 1996.

end of 1997, it was meeting existing bus schedules with equipment leased from local transit companies in the State of Washington.²⁴⁰

Transit and GVRD officials are at least partially concerned that the public will not support specific Transport Demand Management ("TDM") strategy components even though opinion polls indicate broad public support for the principle of TDM and for reducing auto dependence.²⁴¹ One recent example illustrates the lack of support, even by provincial officials. A proposal call was issued in the fall of 1997 for a public-private partnership ("PPP") to build a four-lane replacement for the Lion's Gate Bridge, one of two bridges connecting the north shore communities of North Vancouver City and District and West Vancouver to Vancouver, as well as a four lane tunnel under Vancouver's west-end Stanley Park connecting the new span to downtown Vancouver. The provincial government is proposing that the cost of the new facility be paid for from designated tolls.²⁴² Local and regional officials are concerned that additional user charges may be connected to specific facilities and not with TDM as a concept and principle.²⁴³ Other observers are concerned that the provincial roads bureaucracy is proceeding without consultation with or co-operation from the communities involved.²⁴⁴ There is concern that the provincial government is resorting to the top-down planning of the past that is not in the spirit of the LRSP.²⁴⁵ The provincial government asserts that the August 1997 proposal is only for the one bridge link, is connected to the urgency of replacing a major road connection in need of substantial immediate repair or replacement, and is not indicative of a major policy shift.²⁴⁶

The most positive recent transportation development came in October 1997 when the provincial government and the GVRD announced the successful tentative negotiation of a new regional transportation authority to have jurisdiction over all forms of inter-city urban transportation in the Greater Vancouver region.²⁴⁷ If approved by the cabinet and the GVRD board by March 1998, it will become the first such authority in an urban region characterized by multiple jurisdictions to establish jurisdiction over all

²⁴⁰ *Id.*

²⁴¹ Leicester Interview, *supra* note 193.

²⁴² Brian Morton, *Victoria Calls for Toll-Free Options on Lion's Gate*, VANCOUVER SUN, July 18, 1997.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Marzari Interview, *supra* note 166.

²⁴⁶ Interview with Hon. Mike Harcourt, Premier from 1991-1996, University Endowment Lands, B.C. (Aug. 21, 1997).

²⁴⁷ Recommended Agreement on Transportation Governance and Funding for Greater Vancouver, Oct. 1997.

transport modes.²⁴⁸ Its fifteen member board would consist of twelve members nominated from the different sectors of the GVRD on the basis of population and three provincial members.²⁴⁹ It would finance all regional transport (excluding provincial highways), co-ordinate and deliver bus and rail transit services, co-ordinate the development of policies, standards and funding for a Major Road Network to be retained in municipal ownership, implement the TDM and be responsible for the AirCare program (vehicle testing and enforcement of vehicle emission standards).²⁵⁰ It would continue to have access to BC Transit's existing revenue sources (which include transit fares and other transit revenues, a forty-four cent per litre regional motor fuel tax, a hydro levy, and a non-residential property tax), as well as new sources to be transferred from the provincial government (which include special vehicle registration charges, facility tolls, parking taxes, land profits, parking sales taxes, and sixty-four cents per litre motor fuel tax from the province's existing levy).²⁵¹

While there are significant objections from some local politicians and officials, others feel that a better deal that would enable the region to gain control of transport levers to implement the LRSP will never be forthcoming.²⁵² The latter recognize that the provincial government has moved further than many observers had ever anticipated.²⁵³ Most significantly, Greater Vancouver would remain the only major jurisdiction in North America whose public transit is not supported by residential property taxes.²⁵⁴

F. *Developing Complete Communities*

Another major issue to which planners and local councils will need to devote time and attention is the establishment of pedestrian and bike-friendly suburban developments. As such environments are the stuff of smaller scale planning and the work of architects and urban designers, the regional growth

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Harold Munro, *Transit Talks Will Help Shape Growth of Lower Mainland*, VANCOUVER SUN, Apr. 7, 1997.

²⁵³ *Id.*

²⁵⁴ This would no longer be quite true. One detail of the proposed agreement would see the existing hospital construction property tax, a levy applied to both residential and non-residential property, converted for support of the new authority. Recommended Agreement on Transportation Governance and Funding for Greater Vancouver, Oct. 1997, *supra* note 247.

management strategy has not emphasized this aspect of planning, although the need for "complete" communities is underscored in the LRSP.²⁵⁵ The plan cites such examples as the new False Creek developments and Commercial Drive in Vancouver and Edgemont in North Vancouver District.²⁵⁶ This is a larger planning project that is often not fully understood. Yet it has profound implications for weaning the region's dwellers from their cars. Only following the submission of Regional Context Statements and reviews of municipal OCP's can there be more definitive conclusions with respect to addressing micro-planning issues by suburban municipalities in the Lower Mainland.

G. *Agricultural Productivity in a Growing Urban Region*

While the ALC and its ALR have clearly been successful in protecting the best agricultural land from incursions by urban land uses and in moulding urban form, the ALC and agricultural officials appear to be only now becoming aware of the many ways in which urban development influences agricultural productivity. Agricultural production was stable in the Lower Mainland from 1986 to 1996 following adjustment for inflation.²⁵⁷ Considerably greater attention needs to be devoted to the subject in the future.

H. *Air Quality*

The GVRD is one of two local government jurisdictions in Canada (the Communauté Urbaine de Montréal is the other) to be provided by its provincial government with authority for air quality and air quality monitoring.²⁵⁸ As indicated above, there is considerable concern for future air quality in the light of past events and the geographical similarity between the Lower Mainland and the Los Angeles regions. Projections of emissions indicate a deterioration of air quality after 2006 even if the transit ridership projections in Transport 2021 are achieved.²⁵⁹ The impact of emissions on air

²⁵⁵ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 66

²⁵⁶ *Id.*

²⁵⁷ STATISTICS CANADA, CENSUS OF AGRICULTURE (1986); STATISTICS CANADA, CENSUS OF AGRICULTURE (1996).

²⁵⁸ Catherine Callaghan, *Canada's Healthiest Cities: A 25 City Check-Up*, CHATELAINE, May 1995, at 55-61.

²⁵⁹ GREATER VANCOUVER REGIONAL DISTRICT, AIR QUALITY MANAGEMENT PLAN (1995).

quality is not known, and the GVRD are currently undertaking the construction of a model connecting emissions to meteorological conditions.²⁶⁰

I. Summary

All of the above indicates that the path to efficient growth management, cleaner air, lower infrastructure costs, and a more livable region is not a smooth one, especially if the alternative of low-density peripheral sprawl also represents the North American lifestyle dream. However, most public officials continue to formally support the specific plans and processes accepted in Greater Vancouver over the past quarter of a century. The shortage of land and geography of the Vancouver region make it seem more worthwhile. On the other hand there are some actors that will benefit should past trends continue into the future. They will attempt to block proposals for diverting development from the trend line. And they will often be successful in their opposition.

Many supporters of change are buoyed by partial successes and will declare the achievement of "half a loaf" a victory for the side of growth management. They regard each step, no matter the size, as a beneficial one for the long-term development of the Lower Mainland.

V. CONCLUSION

Formal growth management is new to British Columbia. However, previous planning efforts were in conformity with many of the principles of growth management, and considerable progress has already occurred. Policies and programs implemented over the past quarter of a century have resulted in a 190,000 hectares green zone that places considerable limits on the location of urban growth in the GVRD.²⁶¹ Transit investments from the early 1980s until the mid-1990s have resulted in a twenty-eight kilometre SkyTrain connecting regional sub-centres in three suburban municipalities to downtown Vancouver.²⁶² A single ferry line connects a fourth sub-centre on the north shore to the downtown centre.²⁶³ A commuter rail service now serves Mission in the Fraser Valley Regional District ("FVRD") sixty

²⁶⁰ Interview with Kamal Bhattacharya, Greater Vancouver Regional District Staff, Burnaby, B.C. (Aug. 18, 1997).

²⁶¹ Perkins Interview, *supra* note 235.

²⁶² B.C. TRANSPORTATION FINANCE AUTHORITY, *supra* note 202.

²⁶³ *Id.*

kilometres from downtown and the communities of Coquitlam, Ports Coquitlam and Moody and Maple Ridge en route.²⁶⁴

While considerably less than urban centres in central Canada, transit use in the GVRD is far greater than in the similarly sized cities of Portland and Seattle in the Pacific Northwest.²⁶⁵ In 1995, total unlinked passenger trips per capita were sixty-nine in Greater Vancouver, fifty-two in Seattle and forty-five in Portland, but 103 in Calgary, 122 in Ottawa and 285 in Toronto.²⁶⁶ Density is the primary explanation for greater transit use, although the concentration or dispersal of employment also provides an explanation for trends in transit ridership. The proportion of population living in low-density neighbourhoods was fifty-five percent in Vancouver and eighty-nine and ninety-one percent respectively in Portland and Washington.²⁶⁷

Beginning with ALR zoning in the mid-1970s, but likely stemming as well from the shortage of land connected to the geography of its region, Greater Vancouver transformed itself from a largely single family, low-density city to a denser city region containing a wider mix of housing types. The number of hectares used per thousand total population decreased from seventy-two in 1966 to fifty-eight in 1986, shortly prior to the discontinuation of Environment Canada's Lands Directorate and its land use monitoring system.²⁶⁸ Hectares consumed per thousand population change from 1966 to 1986 was thirty-four in Vancouver and twenty-seven and thirty-five respectively in Toronto and Montreal.²⁶⁹ However, it was forty-seven in Ottawa-Hull, fifty-one in Quebec, fifty-nine in Edmonton, forty-three in Calgary and ninety-five in Winnipeg.²⁷⁰ Vancouver began to more closely resemble its larger urban cousins in central Canada in this two decade period. The proportion of population living in town homes and apartments is today far greater than for its urban cousins in the Pacific Northwest: fifty-one percent in Vancouver; and twenty-one percent in Portland and Seattle.²⁷¹ Perhaps as a result of the ALR, approximately thirty-five percent of new

²⁶⁴ *Id.*

²⁶⁵ *Transit Markets*, in TRANSIT CONNECTIONS: THE INTERNATIONAL TRANSIT PLANNER'S GUIDE (William D. Middleton ed., 1995).

²⁶⁶ *Id.*

²⁶⁷ ALAN THIEN DURNING, *THE CAR AND THE CITY* 40 (1996).

²⁶⁸ JEFFREY PATTERSON, *THE PRAIRIE URBAN COUNTRYSIDE: URBAN/RURAL FRINGE DEVELOPMENT IN PRAIRIE REGIONAL CITIES* (1993).

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ DURNING, *supra* note 267.

urban development from 1979 to 1996 stemmed from conversion of rural residential uses rather than from development of vacant and undeveloped land.²⁷² Vancouver was also transformed from a city heavily dependent on exploitation of B.C.'s resources to a diverse centre of finance and business services.²⁷³ These are the kinds of changes that lead to the success of growth management strategies. Greater Vancouver has already made considerable progress in these areas. Its development industry is a leader in denser residential development and developing difficult sites.

On the other hand, a large portion of development continues to comprise low-density, single family developments. The major issue facing regional decision-makers will focus on the proportion of future development that will take this form, the size of lots and the form, density and location of employment. The arena for these decisions will be local councils and planning departments. The results, however, will be a critical variable in determining the quality of life in Greater Vancouver in the future.

GVRD and provincial officials will readily admit that the most successful of the three prongs underlying growth management in the Lower Mainland is the "top down" agricultural zoning of the ALC. The recent agreement on transport governance and funding will hopefully overcome shortcomings in transport supply and co-ordination. The strategy plan approved by the GVRD in 1996 acknowledges the impact of the trends and development prevailing from the mid-1960s to the early 1990s.²⁷⁴ It proposes that they be altered, principally by concentrating up to eighty percent of growth from 1991 to 2021 in a Growth Concentration Area consisting of the Burrard Peninsula and the sectors of Delta and Surrey closest to the Fraser River.²⁷⁵

This review was intended to focus on emerging land use law, especially on the new growth management initiatives since the early 1990s. A number of issues have as a result not been explored in this review. While successful implementation of current plans and initiatives would likely lead to increased liveability, they would not dramatically alter regional development trends. Some observers note that these initiatives fall considerably short of those that might be conceived under sustainable development principles.²⁷⁶ Nor have alternative planning instruments to the OCP which is the backbone

²⁷² GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 68.

²⁷³ WILLIAM J. COFFEY, *EVOLUTION OF CANADA'S METROPOLITAN ECONOMIES* (1992).

²⁷⁴ GREATER VANCOUVER REGIONAL DISTRICT, *supra* note 66.

²⁷⁵ *Id.*

²⁷⁶ *LIFE IN 2030: EXPLORING A SUSTAINABLE FUTURE FOR CANADA* (John Robinson, ed., 1996).

of urban planning in B.C. been explored. Local governance structures have likewise been neglected.²⁷⁷ Shortcomings in these structures will continue to undercut positive developments. Suburban politicians currently dominate the GVRD board. Ignoring potential provincial nominees for the time-being, suburban politicians will dominate the new regional transport authority. Will this result in the neglect of public transit in the more densely developed parts of the region, principally the Cities of Burnaby and Vancouver, that provide most of the current transit riders? Furthermore, alternative transportation funding and governance structures have not been explored.

The full extent of divisions inside the GVRD and its board and their potential impact on the ultimate successful implementation of the LRSP have likewise not been fully explored. While there is danger in focusing too extensively on media events, there is a real possibility that divisions in the region that seem to have been intensified subsequent to the adoption of the LRSP in early 1996 are fully capable of derailing the entire initiative. These divisions pit the municipalities south of the Fraser River against those of the Burrard Peninsula, up-valley municipalities, including the FVRD, and those that are more auto dependent against those that will receive the bulk of benefits from planned transit investments over the next decade. The divisions are to some extent fiscally driven. The developing municipalities have low non-residential assessment bases. For instance, Vancouver derives only forty-one percent of property tax revenues from residential taxes, while residential assessment generates seventy percent of tax revenues in Langley and Surrey. Both of the latter are also dependent on the continued flow of development cost charges associated with new development to pay for new capital facilities benefiting their entire jurisdictions, as well as the new subdivisions associated with the special levies. They are systems heavily dependent on new development to sustain their community plans. Diverting development to a Growth Concentration Area may ultimately undercut these plans and visions. A fuller review would more adequately address all of the above issues.

²⁷⁷ B.C. MINISTRY, MUNICIPAL AFFAIRS AND HOUSING, *GETTING OUR MUNICIPAL ACT TOGETHER: A DISCUSSION PAPER ON PRINCIPLES*, 19 (1997).

